File: (b) (6) – Kansas City, MO

Date: MAY 17 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew L. Hoppock, Esquire

ON BEHALF OF DHS: Mohammad Abdelaziz
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(b); voluntary departure

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's June 6, 2017, decision denying her application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), and granting her application for voluntary departure. The appeal will be dismissed in part.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent challenges the Immigration Judge's determination that she did not establish that her removal would result in exceptional and extremely unusual hardship to either of her two United States citizen children, who were ages 20 and 17 at the time of the hearing (IJ at 2; Tr. at 40). *See Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002) (discussing exceptional and extremely unusual hardship standard); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001); *compare Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002). The respondent testified that her two children would most likely not accompany her to Mexico and would remain in the United States with their older siblings (I.J. at 4, Tr. at 55, 64, 78-79). Her removal would cause her children emotional hardship (IJ at 4-5). However, the respondent has not established that she would be unable to maintain a relationship with her children via visits and telecommunication. Moreover, the respondent, while having problems with her knees, maintains employment, and she has not established that she, if necessary, would be unable to contribute to her children's support from Mexico (Tr. at 42, 51). In addition, the respondent's children are healthy, able to maintain employment, and the respondent testified that she has three older children in the United States who would contribute to her qualifying relative children's support (Tr. at 55). In light of the foregoing, we find that, considering the factors of this case cumulatively, the respondent has not demonstrated that either of her children will suffer exceptional and extremely unusual hardship if she returns to Mexico.

In addition, the respondent and her youngest child testified that there is a possibility that he may accompany the respondent to Mexico (IJ at 4; Tr. at 48, 78). While we recognize that by accompanying the respondent to Mexico, her child will be separated from friends and family in the United States and may have fewer educational and economic opportunities, we agree with the Immigration Judge that the respondent has not established that her child would suffer hardship substantially beyond that which ordinarily would be expected to result from a family member's removal from the United States (IJ at 4-5). The respondent testified that her child might be required to improve his proficiency in Spanish, which she has not demonstrated to be outside of his capability (IJ at 4; Tr. at 55). Moreover, the child has grandparents in Mexico (Tr. at 49). In addition, her child is approaching adulthood, healthy, and able to maintain employment in Mexico. There is also no evidence that the child's brothers in the United States would be reluctant to help support the child in Mexico. In light of the foregoing, the respondent has not established that her child would suffer exceptional and extremely unusual hardship if he accompanies her to Mexico. There is also no evidence that the respondent's decision to decline administrative closure of her case influenced the decision to deny the application for cancellation of removal (Respondent's Br. at 2; IJ at 3; Tr. at 33-34). Hence, the respondent is ineligible for cancellation of removal.

Turning to voluntary departure, in *Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010), the Board held that pursuant to 8 C.F.R. § 1240.26(c)(3), an Immigration Judge who grants an alien voluntary departure must advise the alien that proof of posting of a bond with the Department of Homeland Security must be submitted to the Board of Immigration Appeals within 30 days of filing an appeal and that the Board will not reinstate a period of voluntary departure in its final order unless the alien has timely submitted sufficient proof that the required bond has been posted. Where the Immigration Judge did not provide all the advisals that are required upon granting voluntary departure and the respondent failed to submit timely proof to the Board that a voluntary departure bond had been posted, the record was remanded for the Immigration Judge to grant a new period of voluntary departure and to provide the required advisals.

The respondent did not submit proof to the Board that she posted the required voluntary departure bond. The record also does not establish that the Immigration Judge advised her to do so. We therefore find it appropriate to remand these proceedings solely on the voluntary departure issue to allow the Immigration Judge an opportunity to provide the respondent with the required advisals.

Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed in part.

FURTHER ORDER: The record is remanded for the Immigration Judge to address the respondent's application for voluntary departure and to provide the required warnings.

FOR THE BOARD